

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 18, 2009 Session

STATE OF TENNESSEE v. KELVIN DEWAYNE KING

**Direct Appeal from the Criminal Court for Davidson County
No. 2006-B-1695 J. Randall Wyatt, Jr., Judge**

No. M2009-01778-CCA-R3-CD - Filed March 26, 2010

A Davidson County jury convicted the Defendant, Kelvin Dewayne King, of three counts of first degree murder and one count of especially aggravated robbery. The Defendant was sentenced to life without parole for each of the three first degree murder convictions. The trial court sentenced him to thirty-five years for the especially aggravated robbery conviction, and ordered the sentence for one of the first degree murder convictions to be served consecutively to the other convictions for an effective sentence of two life sentences without parole. The Defendant appeals, arguing that: (1) the evidence is insufficient to support his first degree murder convictions when his due process rights were violated, (2) the trial court allowed testimony at trial from a witness who had provided perjured testimony at the preliminary hearing, and (3) the trial court erred in ordering consecutive sentencing. After a thorough review of the record and the applicable law, we affirm the trial court's judgments.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Charles Edgar Waldman, Memphis, Tennessee, for the Appellant, Kelvin Dewayne King.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lacy Wilber, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Lisa Naylor, Assistant District Attorney General; Cathy Morante, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION
I. Facts**

This case arises from the August 4, 2004, murders of Koehler Ramsey, Marcus Anderson, and Brittany Goodman. For these offenses, a Davidson County grand jury indicted the Defendant on three counts of premeditated first degree murder, three counts of felony murder, and one count of especially aggravated robbery. At the Defendant's trial on these charges, the following evidence was presented: James Hayes testified that he knew the victim, Koehler Ramsey, because they were both students at Fisk University, lived in the same apartment complex, and played on a basketball team together. On August 4, 2004, he walked to Ramsey's apartment around 8:00 a.m. When he entered the apartment, he saw Ramsey and Marcus Anderson, who Hayes also knew through a basketball program in Memphis, lying in blood. Hayes' cell phone was not working, so he ran to the Fisk University gym to use the phone in his coach's office, but found the coach was not there. Upon exiting the gym, Hayes saw a police officer driving down the street, and he told the officer what he had seen.

Officer Arthur Danner testified that on August 4, 2004, he was working in the patrol division of the Metropolitan Nashville Police Department when Hayes flagged him down. Hayes pulled up along side Officer Danner's car and screamed that he found two of his fraternity brothers dead in an apartment. Officer Danner went to the apartment at 1601 Herman Street ("Herman Street") to further investigate, and confirmed that two young men were dead in the apartment. The officer immediately called for an ambulance and other officers to assist him.

Daniel Cage, a Metropolitan Nashville police officer, testified that he was the first to arrive at the scene after Officer Danner's call for backup. When Officer Cage arrived, he and Officer Danner entered the apartment to ensure that the assailants were gone and found only the two victims. Officer Cage confirmed that both victims were dead. Anderson's body was seated in a chair and Ramsey's body was seated on the couch. Officer Cage noted that neither victim was in a defensive position and Ramsey's hands were still in the position of holding a video game control. Officer Cage observed that the television was set on a video game setting.

Tim Matthews, from the identification section of the Metropolitan Nashville Police Department, testified that he photographed and drew a diagram of the Herman Street crime scene on the day of these murders. Officer Matthews described the living room of the apartment as a relatively small room, where Ramsey's body was on the sofa and Anderson's body was located in a chair on the back side of the room. Both victims were in a seated position, with their pockets turned out, and had large amounts of blood around their faces and chests. There was no indication of a struggle or forced entry into the apartment. The television was on and set to an alternate channel to play video games. Play Station video games, a memory card, and a DVD disc were recovered at the apartment, but no DVD player,

game system, or controllers were found.

Officer Matthews testified police found two nine millimeter discharged shell casings beside Ramsey, one behind his head and the other between the couch cushions. Officer Matthews stated that a bullet fragment was found on the floor between Ramsey's feet, two discharged shell casings were found near Anderson, one of which was found in the folds of his shirt. Green plant material which appeared to be marijuana was recovered from both the living room and inside the front bedroom. Officer Matthews further testified that fingerprints were collected at the scene, as well as some blood samples from blood spatter near the inside door frame and on the outside door of the apartment.

Heather Young testified that, on August 4, 2004, she was working as the property manager in Bellevue at Waterford Place ("Waterford Place"), where Marcus Anderson rented an apartment. On that day, Detective Robinson came to the complex and requested entrance to Anderson's apartment. Young did not allow the Detective to search the apartment, but went with her maintenance supervisor to conduct a maintenance check of the apartment. Young knocked on the door and there was no response. She attempted to use her key to open the door but it was unlocked. Young recalled that she "did [not] have a good feeling." She entered the apartment first, and the maintenance supervisor walked down the hallway, but all the doors were shut. They called Anderson's name as they went through the apartment but received no response. Young entered the first bedroom and saw a person, later identified as Brittany Goodman, Anderson's girlfriend, lying on her side. The side of her face and the bed sheets were covered in blood. Young told the maintenance supervisor, and they locked the apartment, returned to where Detective Robinson was waiting, and gave him keys to enter the apartment.

William Kirby of the Metropolitan Nashville Police Department Identification Section testified he reported to the Waterford Place crime scene on August 4, 2004, where he found the door unlocked and no signs of forced entry. Officer Kirby photographed the scene, collected evidence, focusing on firearms evidence, and assisted in creating a crime scene diagram. He went into the bedroom where Goodman's body lay, and saw that she appeared to have been sleeping with the covers pulled up close to her head. Near her, he collected two shell casings, one by her arm and the other in plain view on the bed. Officer Kirby testified that police were unable to successfully lift any fingerprints from the apartment. The apartment appeared to be in order with nothing overturned or disturbed.

Armand Davis, who was also charged with Brittany Goodman's murder, testified he had a previous felony drug conviction. Davis further testified that he came to Nashville from Memphis with the Defendant on July 29, 2004, after a warrant on unrelated charges had been issued for Davis' arrest. The Defendant suggested the two men go to Nashville where Davis

could “make more money” selling drugs, because of the higher drug prices in Nashville, and where they could “get away for a minute.” The two men left Memphis in the Defendant’s van but, after the van’s transmission broke down, the Defendant called a friend, Tariq Seymore, to take them the rest of the way to Nashville in Seymore’s Maxima. Once they arrived in Nashville, they went to one of the Defendant’s friend’s apartments to stay the night. In the morning, the three men went to Pinkie’s car wash and beauty shop in Nashville. The Defendant told Ira Bowers, “Pinkie,” about his van, and Pinkie arranged for a truck to tow the van to Nashville. Seymore, Davis, and the Defendant waited at Pinkie’s for the van to arrive. While they were waiting, Anderson, whom Davis had never met, arrived in a white Oldsmobile.

Davis recalled that Seymore returned to Memphis, and so Anderson drove the Defendant and Davis, either in Anderson’s white Oldsmobile or in Goodman’s white Toyota, for the remainder of their stay in Nashville. During this time, Anderson invited Davis and the Defendant to stay at his apartment. Davis testified that, during the few days they stayed in Nashville, he and the Defendant went back to Memphis twice in Goodman’s Toyota to purchase drugs. Anderson accompanied them on one of the two trips. After one of the trips to Memphis, they went back to Anderson’s apartment and “weighed up” the marijuana before taking it to Ramsey’s apartment. Davis described Ramsey as Anderson’s “partner.”

Davis testified that the next day the Defendant went to a golf course with Pinkie. Anderson and Davis drove around in Goodman’s Toyota and waited for a phone call from Steven Hardy, a record manager Anderson was hoping to work with. Hardy called and Anderson arranged to meet Hardy at Ruth’s Chris Steakhouse. Anderson and Davis arrived in Goodman’s car at the restaurant around 11:00 p.m. At about the same time, the Defendant was dropped off at the restaurant by Pinkie. Davis recalled that everyone stayed at the restaurant briefly because it was closing, but they agreed to meet in a half hour at an IHOP. The Defendant, Anderson, and Davis left together in Goodman’s Toyota, drove to the IHOP, ordered food, and waited for Hardy. Once Hardy arrived, Davis noted Hardy was no longer wearing the jewelry he wore at Ruth’s Chris Steakhouse and that Hardy was driving a different vehicle. The Defendant talked with Hardy about “the deal” Hardy had offered Anderson. Davis described the Defendant as acting as if he were Anderson’s manager. Based on the conversation, Davis said that the Defendant apparently did not think Hardy’s offer was a good one. Davis testified that he only listened during the conversation, and he noted that Anderson did not speak much and seemed embarrassed. Davis recalled that at some point the Defendant was upset about his food and took his food back to the kitchen. They remained at IHOP about twenty minutes before Hardy left in a gray Toyota.

Davis testified that, after the meeting at IHOP, the Defendant wanted to go back to Ramsey’s apartment to get more “hydro,” a better grade of marijuana. Anderson drove them

to Ramsey's apartment where Ramsey was playing Play Station. Ramsey asked for twenty dollars a piece for the "hydro" and, after examining the drugs, the Defendant objected to the price. Davis stated that the Defendant and Ramsey "had a little altercation" over the price, but then the Defendant "was all right" and asked for the restroom. When he came out of the restroom, he pulled a gun, took off the safety, and shot Ramsey twice in the head and then turned and shot Anderson twice in the head. Davis, who was sitting on the couch next to Ramsey playing the video game, jumped up and ran out of the door after the Defendant fired the first shot. The Defendant came out shortly after Davis and said, "you forgot the Play Station. Your fingerprints are all on it, you know." The Defendant also had the marijuana he had argued with Ramsey over and the keys to Goodman's Toyota. Davis testified that at this point he just wanted to go back to Memphis, but their bags were still at Anderson's apartment. The Defendant told Davis "we gotta [] kill the girl. She's the only one who knows we're here and our clothes are still over there."

Davis recalled that, once he and the Defendant arrived at Anderson's apartment, the Defendant tried the key, but it would not work, so he knocked on the door and identified himself to Goodman. She opened the door and headed back to a bedroom. Davis gathered their clothes and was leaving the apartment when he heard two gunshots. When the Defendant got back in the car, he said, "it was easy – easy. All I did was tap her on the shoulder and shot twice." On the drive back, the Defendant asked Davis if he was "all right." Davis asked him why he had to kill Anderson, and the Defendant replied that "'Marcus is a bitch,' or something like that." Davis testified that he saw the murder weapon, a black nine millimeter, on the drive back to Memphis and had seen it on the Defendant previously because the Defendant always wore it in his waistband. When they arrived at Vicki Parson's house, the Defendant's girlfriend in Memphis, they parked Goodman's Toyota in the garage, and the Defendant took Parson's car to drop Davis off at his aunt's house.

Davis testified that the next day he received a call from the Defendant who wanted to meet with Davis. The Defendant stated he was getting a lot of phone calls from Anderson's family. The men met at a fast food restaurant and Seymore was with the Defendant. The Defendant told Davis that he and Seymore were going to Nashville. The three men left the restaurant and went to the Defendant's mother's house. From there, Davis suggested they get a room at a hotel so the Defendant could "get his thoughts together." Davis paid for the room, but Seymore checked into the room under his name.

Davis testified that the Defendant received numerous phone calls about the murders while they were together, one of which was from a detective. Davis recalled hearing the Defendant tell the detective that he did not murder the victims and would drive back to Nashville to talk with them. The Defendant told Davis that "Pinkie probably said something, and he didn't know no better." The Defendant also told Davis that he got someone to dispose

of Goodman's car. The Defendant said he was going to Nashville to talk to the detectives and wanted Davis to say nothing to the police. Seymore and the Defendant left to go to Nashville while Davis stayed in the hotel room watching television.

Davis testified that later that night the Defendant woke him up knocking on the hotel room door. The Defendant said he decided not to go to Nashville but to change his identification and flee instead. The Defendant left and Davis went back to sleep. Later, he was awakened again, this time by the police, who informed him that Seymore had signed a consent to search the hotel room. The police searched the room, and Davis consented to a search of his car. The police took Davis into custody and he spoke with Shelby County Detectives, initially telling them he did not go into Anderson's apartment when Goodman was killed. Davis explained this lie by saying that he "really was trying to just narrow myself out of it, to be less involved if I could." After denying he entered the apartment, Davis confessed to police that he entered the apartment with the Defendant to get his belongings when Goodman was shot. Davis agreed that he had been interviewed multiple times since the initial interview and had consistently stated that he knew they were going to Anderson's to kill Goodman and get their belongings.

Davis acknowledged that he was charged for his participation in the murder of Brittany Goodman and was appointed an attorney, who was present in court during Davis's testimony. Davis testified that he decided to cooperate and talk with detectives, as well as testify against the Defendant at trial. Davis agreed that he had not been offered any deal or agreement in exchange for his testimony at trial.

On cross-examination, Davis admitted that police found cocaine powder in his pocket when he was arrested, and described himself as a heavy pot user at that time. Davis also admitted multiple times during cross-examination that, during the preliminary hearing for this case, while under oath, he stated that he did not enter Anderson's apartment when the Defendant shot Goodman. Davis admitted he was a drug dealer in August 2004.

Davis again recounted the events of the day of the murders stating that he spent the majority of the day with Anderson while the Defendant was with Pinkie and adding that, at Ruth's Chris Steakhouse, Hardy was driving a SL-500 Mercedes and at IHOP Hardy arrived in a gray Toyota, dressed differently, and wearing no jewelry as he had been at Ruth's Chris Steakhouse. By the end of the conversation at IHOP, Davis felt Hardy had "lost interest in the deal."

Davis testified that, after leaving IHOP, the Defendant and Anderson argued the whole way to Ramsey's apartment regarding the discussion with Hardy. Davis speculated that the Defendant was angry because Anderson was not listening to him regarding the management

deal with Hardy. While at Ramsey's, Anderson appeared to Davis to be frustrated and "ready to go." Davis estimated that the Defendant was a couple feet from Ramsey when he shot him. After the Defendant shot Ramsey, Anderson asked what he was doing and then the Defendant turned and shot Anderson twice. Davis fled the apartment and the Defendant followed with the Play Station.

Tariq Seymore, the Defendant's friend, testified that he has known the Defendant about four years. Seymore received a phone call early in the morning on July 29, 2004, from the Defendant. The Defendant told Seymore that his van had broken down and he needed Seymore to come and get him. Seymore picked up the Defendant near Jackson, Tennessee, in Seymore's green Maxima. When he arrived, the Defendant was with a man introduced as "A" or "A.D.," later identified as Armand Davis. The Defendant asked Seymore to take them to Nashville so the Defendant could see his son and offered to pay Seymore's gas for the trip. Seymore agreed, the Defendant and Davis put their duffle bags in the Maxima, and they drove to a friend's apartment in Nashville for the night.

The next morning, Seymore took the Defendant and Davis to Pinkie's shop. The Defendant made arrangements with Pinkie for his van to be retrieved and then they waited for the van to arrive. Once the van arrived, the Defendant told Seymore he could leave, and Seymore drove back to Memphis at approximately two or three in the afternoon. The following week, the Defendant called Seymore and asked him to come to his house. When he arrived, the Defendant was in the shower, so Seymore waited in the driveway for approximately an hour. When the Defendant came out, he was on the phone and handed Seymore some marijuana. Seymore was in his car while the Defendant was talking on the phone outside the car. Seymore testified that the Defendant was "getting heated as he talked," so he rolled down the window to listen. He heard the Defendant say "[Seymore] came and picked me up in Nashville" and "detective." From the use of the term "detective," Seymore assumed that the Defendant was speaking to a detective. Seymore recalled that the Defendant later called someone whom he told to take the car to "E's" shop and "get the car cleaned."

After that conversation, the Defendant got into Seymore's vehicle and appeared "a little worked up." The Defendant told Seymore to say he picked the Defendant up in Nashville and drove him back to Memphis, and, although Seymore knew this was not true, he agreed. Seymore then took the Defendant to meet Davis at a fast food restaurant and Davis followed them to a hotel, where Seymore registered for a room in his name at the Defendant's request. Around 10:00 p.m., they saw a picture of the Defendant on the news related to the Nashville triple homicide. Some time after that, Seymore took the Defendant home while Davis remained at the hotel room.

Seymore testified that, when they arrived in the Defendant's neighborhood, a police

car was circling the neighborhood. After Seymore left the Defendant, he noticed that the police car followed him for a few miles and then pulled him over. Seymore had been smoking marijuana, which the officer smelled, and asked Seymore to exit the vehicle. The officer took Seymore to the police station, where Seymore lied to detectives at first, but eventually told the truth. The police told Seymore they found marijuana and a box of bullets in his car. Seymore acknowledged possession of the marijuana, but said he did not know there was a box of bullets in the glove box. Seymore recalled that the Defendant rode in the front seat of Seymore's car on the way to Memphis, and he opened the glove box. Seymore did not see the Defendant put bullets in the glove box, but said the Defendant was the only other person who would have had access to the glove box.

On cross-examination, Seymore admitted he used marijuana daily. Seymore testified that, when he arrived at the Defendant's house, he saw a white Toyota Solara in the garage. Seymore did not tell police this when he was interviewed in August 2004, but did tell them about the car in a March 2006 interview. Seymore also acknowledged that the Defendant asked Seymore to drive him to Nashville to talk with detectives. They began the trip but turned around and returned to Memphis.

Sergeant Joseph Wayne Moore with the Shelby County Sheriff's Department testified that on the night of August 4, 2004, he was working in the patrol division. Sergeant Moore received notice of a triple murder in Nashville and of a white car, belonging to one of the victims, that police thought to be en route to Memphis. Sergeant Moore drove by the suspect's residential address in Bartlett, Tennessee, and noticed a car parked in the driveway with the engine running, all of the doors open, and the lights on. The garage door of the house was open, and he saw two black men, one in the garage and one outside the car. Sergeant Moore circled the block, parked and walked up the street. He heard the two males talking, one of them said, "the police just drove by," to which the other responded "I'm getting out of here," and drove away. Sergeant Moore ran back to his car, and caught up with the man, he later learned was Seymore, and stopped him for speeding. Upon approaching the vehicle, Sergeant Moore smelled the strong odor of marijuana and asked Seymore to exit the vehicle. Seymore admitted he had been smoking marijuana, so Sergeant Moore placed him under arrest and searched the car, recovering from the glove box a box of forty caliber automatic bullets and some type of gun permit badge. A bag of marijuana was hidden in the gear shift. Seymore claimed he did not know the bullets and gun permit badge were in the glove box.

Ira Bowers, also known as "Pinkie," testified that he owned a car wash and a beauty parlor in Nashville, Tennessee. Bowers said he had been friends with the Defendant for approximately ten years. Bowers recalled that on Friday, July 30, 2004, the Defendant contacted Bowers and told him that his van had broken down on his way to Nashville. Bowers sent a truck to tow the vehicle to a shop in Nashville. Bowers recalled that the

Defendant had a couple of friends with him that Bowers did not know. Bowers again saw the Defendant on Tuesday, August 3, 2004, when the Defendant joined him and his friends on a golf outing. When they arrived at the course, Bowers noticed that the Defendant had a gun and he told the Defendant he could not carry a gun on the golf course. The Defendant gave Bowers the gun, a black automatic handgun, and Bowers placed it in his golf bag. Bowers returned the gun to the Defendant after he finished playing golf. They left the course and went to Bower's home briefly before going to the car wash.

Bowers testified that the Defendant's friends were at the car wash when they arrived, and the Defendant left with them in a "little white car." The Defendant returned shortly and asked if he could go with Bowers to the race track, and Bowers agreed. At approximately 9:30 p.m., Bowers received a phone call for the Defendant, after which the Defendant asked Bowers to take him to Ruth's Chris Steakhouse. Bowers drove the Defendant to the restaurant and, when he pulled into the valet parking in front, he noticed that the "little white car" with the Defendant's friends pulled in behind him. The Defendant exited Bower's vehicle, and that was the last time Bowers saw the Defendant.

On cross-examination, Bowers admitted that his criminal history included two convictions for petit larceny and "burglary third." Bowers denied knowing anyone by the name of Steven Hardy.

Steven Hardy testified that he was in the music business and in 2004 he worked as an agent for Royal and Uncut Entertainment based in New Orleans. Hardy listened to one of Anderson's promotional compact discs and offered Anderson management services. Anderson entered an investment management contract with Hardy, but they never entered a full recording agreement due to Anderson's death. Pursuant to their contract, Hardy invested an initial \$10,000.00 toward Anderson's career in the music industry and established his fee of 20%.

Hardy testified he was in Nashville on August 3, 2004, and was dining with his fiancé at Ruth's Chris Steak House when he received a call from Anderson, who wanted to go over a few things. Anderson arrived with the Defendant, who Hardy did not know, although Hardy did recognize the person who dropped them off at the restaurant as "Pinkie," a local businessman. A third man, later identified as Davis, also met them at Ruth's Chris Steakhouse in a white Toyota. The restaurant was closing so they agreed to meet at an IHOP. Hardy testified that, before going to the IHOP, he went to his fiancé's home to change clothes, remove the expensive jewelry he was wearing, and to exchange cars with his fiancé from his Mercedes to her Toyota Corolla. He explained that he and his fiancé "felt real uncomfortable" with some of the things that were said and the "company" at Ruth's Chris Steakhouse.

When Hardy arrived at IHOP, he noticed that Anderson, a normally cheerful person, was not acting like himself, and Hardy described the Defendant's behavior as "outrageous." Hardy recalled that the Defendant ordered chicken tenders, and, when the waitress did not bring ketchup, the Defendant got up, walked to the waitress station, and, while using profanity, got the ketchup himself. The Defendant repeatedly told Hardy he wanted to invest in Anderson's career, but Hardy told the Defendant that they would talk about it at the attorney's office in the morning because Hardy did not "exchange money at night." During the Defendant's discussion regarding Anderson's contract with Hardy, Anderson was very quiet. Hardy described the Defendant's demeanor as fidgety and "very jumpy," with his voice varying from calm to loud. Hardy recalled that Davis did not speak at all. They were at IHOP thirty-five to forty minutes, and as they were leaving, the Defendant invited Hardy to "smoke a little weed" with them, but Hardy declined. Hardy testified that he learned of Anderson's murder on August 4, 2004.

Dorothy Anderson, Marcus Anderson's mother, testified her son was twenty-four at the time of his death and had been dating Brittany Goodman for approximately one year. She testified that Anderson was living alone in Bellevue at Waterford Place and that he drove a white 2001 Oldsmobile Alero. Mrs. Anderson testified that Goodman and her son would borrow each other's cars. She testified that Anderson came to Nashville to go to college at Tennessee State University ("TSU") when he started working with a music studio writing songs and music. Mrs. Anderson learned of her son's death on August 4, 2004, from her daughter who lives in Memphis. Later that same day, some of Anderson's friends came to her home and played a phone recording for her. Mrs. Anderson did not recognize the caller's voice but heard the message which said "they understood their names were on the news media and on the internet. And if they found out who did it, that they were going to kill them."

Vicki Dunbar, Brittany Goodman's mother, testified that her daughter was twenty-four at the time of her death and lived with her parents. She said Goodman had been dating Anderson about three years and that Goodman owned an off-white 2000 Toyota Solara, which police found in Memphis. Dunbar also testified that Anderson drove a white Alero and that Anderson and Goodman frequently exchanged vehicles. In fact, the weekend before their murders, Goodman was driving Anderson's Alero. Dunbar recalled that, the last day she saw her daughter, Goodman left the house with her travel bag. Dunbar testified that she assumed Goodman was going to stay the night at Anderson's apartment which Goodman frequently did.

On cross-examination, Dunbar admitted that at a previous hearing she could not remember which vehicle her daughter drove the weekend before her death. She explained that talking with friends had "jogged her memory" and that she now recalled it was the Alero.

Aric Bady testified that he lived in Memphis and owned a body shop. The Defendant, whom he had known for approximately three years through his body shop, called Bady on August 4, 2004, to tell him the Defendant was going to bring a vehicle to Bady's body shop. The Defendant called Bady again later that day and said that someone else was going to drop off the vehicle at about 7:00 p.m. Bady left the body shop a little before 7:00 p.m. and returned after 8:00 p.m. to find a white Toyota Solara in the shop. On his way back to the shop, the Defendant called Bady and instructed him to "break the car down" which Bady understood as a request to dismantle the car. Bady noted that the Defendant had never made such a request before.

The next morning, Memphis Police Detectives came to Bady's business looking for a white Toyota Camry. They asked for consent to search the property, and Bady agreed. The police officers examined the Toyota Solara, and Bady told them everything he knew related to the vehicle. In further testimony, Bady acknowledged his previous convictions for bank fraud, forgery, and theft of property.

On cross-examination, Bady acknowledged that he was currently on federal probation but said that he had no plans to ask the Judge to reduce his sentence in exchange for his testimony in this trial and that no promises had been made to him in return for his testimony. Bady also testified that the Defendant never specifically named the type of car he was going to bring to the shop. The Defendant told Bady he would give him the details later, but the Defendant never called.

Willie Clark testified that, on August 4, 2004, he worked at Bady's body shop. Clark testified that a man, who introduced himself as "K," dropped off a white Toyota Solara around 7:00 p.m. "K" asked specifically for Bady, and Clark gave him Bady's cell phone number. Several minutes later, "K" asked "who is Willie?" and Clark indicated that he was Willie. "K" gave the keys to Clark and said he would come back the next day to tell Bady what to do with the car. Clark did an initial assessment on the vehicle and then brought it inside the shop.

Vickie Parson testified that she and the Defendant resided in Memphis together with their child. Several days before August 4, 2004, the Defendant told Parson he was going to Nashville, and she assumed he was going to see his other child. Parson did not recall when she arrived home from work on August 4, 2004, but normally it was between 1:00 a.m. and 2:00 a.m. She and the Defendant, who arrived home some time after Parson, were asleep when police officers came to her home looking for the Defendant. Parson gave the police consent to search their home. Parson recalled that the Defendant's mother's inoperable brown BMW and Parson's Lumina were parked in their garage that morning. Parson testified that the Defendant drove a van.

Willie Holman, Anderson's friend, was shocked when he learned of Anderson's death because he had just spoken to Anderson the day before, and Anderson was excited about the possibility of a management contract for his music. Holman called Maurice Morris, Patrick Morris, and Howard Hill to see if they had heard about Anderson's death, and they decided to drive to Nashville "to see exactly what was going on." On the drive to Nashville, Maurice Morris received a phone call from the Defendant. Maurice was reluctant to answer the call so he handed it to his brother, Patrick Morris, who answered the call and put it on speaker phone for everyone in the vehicle to hear. Holman recognized the Defendant's voice because he knew the Defendant from TSU. Patrick asked the Defendant whether he was aware that Anderson was dead, and where the Defendant was now. The Defendant said he did not know "what was going on" and that he was on his way to Memphis to deal with a vehicle that had broken down. The Defendant said he would return to Nashville to "clear his name." Holman, Maurice, Patrick, and Hill arrived at Waterford Place, Anderson's apartment, and observed crime scene tape and police officers, who confirmed Anderson's death. During their return trip to Memphis, the Defendant called again multiple times, but they did not answer the phone. The Defendant left a message stating "he didn't know why people were saying that he done it. He said whoever killed Marcus, he was gonna kill them. And whoever's putting his name in it, he's going to kill them, too." Mr. Holman admitted that he had a misdemeanor conviction for theft.

On cross examination, Holman testified that he did not know Tariq Seymore or Armand Davis. Holman also recalled that Anderson drove either an Alero or a Solara.

Patrick Morris testified that he had known Anderson for approximately fifteen years, and they spoke to each other daily by phone. Patrick recalled that the last time he saw Anderson was in Memphis a few days before his murder. Howard Hill, Patrick's roommate, asked Anderson to stop by their home before going to Nashville. Anderson, the Defendant and another male pulled up in Goodman's car, a white Toyota Solara. The Defendant was driving, and Anderson was in the backseat speaking to Patrick and Hill on his cell phone. Anderson did not come into the house, so Hill and Patrick only spoke to him over the phone. He told them he was going to Nashville, but would be back to Memphis that same day.

Patrick testified, that shortly before his murder, Anderson called him late at night from an IHOP restaurant and told him he had news regarding a record deal. He sounded irritated, and Patrick asked him what was wrong. Anderson responded "something that [the Defendant] did, but never mind, no big deal." Anderson told Patrick he was going to Memphis the next day, and they would celebrate. Patrick testified that he did not know Armand Davis or Tariq Seymore.

Patrick testified that, after learning of Anderson's death, Patrick, along with his brother Maurice Morris, Howard Hill, and Willie Holman drove to Nashville. On the drive to Nashville, Maurice or Holman called the Defendant using the speaker phone setting. They asked what had happened to Anderson, and the Defendant said he did not know and would call them back. Ten to fifteen minutes later the Defendant called back, saying that he did not know who did it, that he did not do it, and that, if he found out who killed Anderson, he would kill them. He also said, "And if you-all put my name in anything, I'm going to kill you-all, too."

Patrick recalled that, once they arrived in Nashville, they went to Waterford Place, Anderson's apartment. Police officers were on the scene, and Patrick let them know they had attempted to reach the Defendant. They spent the night in Nashville and returned to Memphis the following day. At some point, the Defendant left a message on Maurice's phone and it was played for a detective or officer in Memphis.

Maurice Morris testified that he knew Anderson most of his life and described him as "a very good friend." Maurice knew the Defendant through Anderson but did not know Armand Davis or Tariq Seymore. On the way to Nashville with Patrick, Hill, and Holman, he called the Defendant's cell phone because they knew Anderson had been with the Defendant. Maurice called several times, and no one answered, but then the Defendant called back. Maurice asked the Defendant if he had heard what happened, and the Defendant said no. When they arrived in Nashville, they went straight to Waterford Place, Anderson's apartment. Police officers were at the scene, and they informed police that the Defendant had been with Anderson recently. On the return trip to Memphis, the Defendant left a voicemail message saying his face "was on CNN and other news stations. And he said that if we say his name that he would kill everybody."

On cross-examination, Maurice testified that, after going to Anderson's apartment, they went over to Anderson's ex-girlfriend's house and then left for Memphis later that night. When Maurice got home he listened to his voicemail messages and heard the message from the Defendant. Maurice said he played the Defendant's voicemail message for detectives and some friends but did not recall the exact time he received the voicemail message.

Detective Derry Baltimore of the Homicide Division of the Metropolitan Nashville Police Department testified he reported to the Waterford Place crime scene to investigate the murders in this case. During the course of the day, he collected the Defendant's phone number, which he called. The Defendant answered and admitted he knew that the Detective had been looking for him. Detective Baltimore asked the Defendant if he knew anything about the Nashville murders, and the Defendant responded, "very little," but that he knew Anderson was murdered. Detective Baltimore requested that the Defendant come back to

Nashville to talk with detectives. The Defendant said, “[A]re you crazy?” and that he knew police would “lock him up” if he came back to Nashville. The Defendant told Detective Baltimore he would come to Nashville if Detective Baltimore would send his mother a fax stating they would not “lock him up.” Detective Baltimore told the Defendant that he could not do that. The Defendant said he loved Anderson but knew if he returned police would arrest him. He told the Detective he last saw Anderson about 1:00 a.m. and that they met at Ruth’s Chris Steakhouse with “some shady producer.” The record producer began to “talk crazy,” so they decided to leave and meet up later at an IHOP. When they arrived at IHOP, the Defendant recalled that he noticed that the record producer had removed all the jewelry he had been wearing earlier. They remained at IHOP for approximately forty-five minutes before Anderson dropped the Defendant off to meet Seymore, who drove him back to Memphis. The Defendant ultimately agreed to come back to meet with detectives in Nashville. A couple hours later, however, the Defendant called Detective Baltimore and left a message saying he had car trouble and would not come back to Nashville.

Detective Terrell Robertson testified that he worked for the Shelby County Sheriff’s Office and in August 2004, he participated in the investigation of the triple homicide in Nashville. Detective Robertson first met with the Defendant in the interrogation room in Memphis where he and two detectives from Nashville asked the Defendant if he would talk about the homicides in Nashville. The Detective said that the Defendant appeared to be shocked or stunned. When Detective Robertson mentioned Anderson, the Defendant responded “Oh my God, not Marcus. I love Mr. Marcus.” The Defendant denied knowledge of the homicides and answered all the detectives’ questions with a question. After a short time, the detectives from Nashville terminated the interview because they felt it was not productive.

Detective Robertson also interviewed both Seymore and Davis and recorded the interviews. The Detective said that Davis’s trial testimony was consistent with what he told detectives during the interview, with the exception that he initially denied entering Anderson’s apartment when King killed Goodman. The interview concluded, but several minutes later, Davis requested a second interview and told the detectives he entered the apartment to get his clothing, heard two gunshots, and left the apartment, which was consistent with Davis’s trial testimony.

Hugh Coleman testified he worked in the Homicide Unit of the Metropolitan Nashville Police Department in August 2004. Detective Coleman testified that he went with Detective Todd Watson to Memphis as part of the investigation in this case and assisted in the Defendant’s interview. Detective Coleman recalled that the Defendant initially seemed surprised and anxious and asked why he was there. Detective Watson told the Defendant that they wanted to talk with him about an incident that occurred in Nashville, naming one or more

of the victims. The Defendant acted surprised, became very loud, and expressed disbelief. The Defendant would not answer any of Detective Watson's questions, responding to all of the questions with a question. After a short period, Detective Watson terminated the interview with the Defendant.

Detective Charles Robinson testified that he worked in the homicide unit of the Metropolitan Nashville Police Department in August 2004, and initially assisted the lead detective in this investigation. At some point during the course of the investigation, however, the District Attorney's office requested a reinvestigation of these murders because some of the evidence had been lost. Detective Robinson then assumed responsibility as the lead detective in the reinvestigation. The missing evidence was a box of evidence recovered from Goodman's Toyota, which police recovered in Memphis. Detective Robinson personally reworked the entire case, including interviewing witnesses, requesting additional fingerprint and DNA analysis, and going back through all of the physical evidence in this case. Police were able to identify only two fingerprints recovered at Ramsey's apartment, one belonging to Ramsey's roommate and the other belonging to Ramsey's friend, Shawn Page. The Detective testified that the blood smear recovered near the door of Ramsey's apartment was identified as Ramsey's blood.

As part of the reinvestigation, Detective Robinson reviewed phone records and determined that on August 4, 2004, fourteen calls were made between Maurice Morris and the Defendant. The phone records indicated that, on the same date, there were also phone calls between the Defendant and Davis, Seymore, Vicki Parson, Detective Baltimore, and "Pinkie" Bowers.

Detective Robinson acknowledged there was no tape recording of the Defendant's statements to detectives on August 5, 2004, in Memphis. He explained he was unsure of whether a recording was never made or whether it was lost.

Todd Watson testified that he was initially assigned as the lead investigator on these homicides. He and Detective Coleman went to Memphis when police located Goodman's Toyota and the Defendant. While there, Officer Watson spoke with Seymore, Davis, and the Defendant. Officer Watson testified that Seymore gave no information that he was personally involved with the murders. Officer Watson then recounted Davis's testimony, which was consistent with Davis's testimony at trial, except that Davis said in the interview that he did not go into Anderson's apartment but rather waited in the car when the Defendant shot Goodman. Officer Watson stated that, at the time, he did not believe Davis because Davis was very reluctant and his hands were shaking. Officer Watson testified that he was not present when Davis later admitted that he entered the apartment with the Defendant. Further,

he did not learn that Davis had subsequently made contrary statements until after the preliminary hearing.

Officer Watson testified that Memphis and Nashville detectives were present when the Defendant was interviewed. When the Defendant entered the room he immediately wanted to know the purpose of the interview, but Officer Watson knew that the Defendant and Detective Baltimore had already discussed the investigation the day before on the phone. Officer Watson explained to the Defendant that the police were investigating several murders. The Defendant agreed to talk with the detectives, and immediately began talking about how much he loved Anderson and would never hurt him. Officer Watson testified that “it became clear he never had any intention whatsoever of cooperating with my interview.” The Defendant acknowledged he ate with Anderson at IHOP but stated that he then walked a half mile to the Arbors where Seymore picked him up, and they drove back to Memphis. After a short time, Officer Watson terminated the interview because the Defendant was not going to talk about the events in Nashville.

Officer Watson testified that police recovered Goodman’s Toyota in Memphis. The car was then towed for processing to a location in Memphis. All evidence recovered from the car was put in a small box and delivered to Officer Watson in Nashville. Officer Watson received it at the end of the day and placed the box on the floor underneath his desk. The next morning, a janitor mistook it for trash and threw it away. Several days later, Officer Watson noticed it was gone and reported it to his Sergeant.

Officer Michael Baker worked in the Forensic Firearm Section of the Metropolitan Nashville Police Department and testified as an expert witness in the field of firearms toolmark examinations in this case. Officer Baker testified that he examined projectiles and casings recovered from both crime scenes and determined that the cartridge casings came from the same firearm and that the projectiles recovered from all three victims in this case came from the same firearm. Officer Baker also examined the box of Winchester ammunition collected from Seymore’s car in Memphis. Officer Baker testified that the weapon used in these crimes was either a Ruger or a Smith and Wesson, and the box of ammunition was nine-millimeter and manufactured by Winchester. All of the discharged cartridges casings recovered from the crime scene were nine millimeter and, except for one, manufactured by Winchester.

Dr. Stacy Turner worked as an Assistant Medical Examiner for the Davidson County Medical Examiner and testified as an expert in the field of Forensic, Anatomic, and Clinical Pathology. Dr. Turner testified that she performed autopsies on Ramsey, Anderson and Goodman on August 5, 2004. All three of the victims had two gunshot wounds to the head, with either wound on each victim a fatal wound. Dr. Turner estimated that the gun would

have been approximately one to three feet away from the skin of each of the victims when fired. Dr. Turner testified that the cause of death for Ramsey, Anderson and Goodman was gunshot wounds to the head and that the manner of each death was homicide.

Detective Steve Farris worked for the Shelby County Sheriff's Office as a crime scene technician and investigator. Detective Farris recalled that he did a forensic examination of a white Toyota Solara in August 2004. The car was vacuumed for forensic fibers, dusted for prints, photographed, and some blood transfer evidence was also taken from the car. This evidence was packaged up and delivered to Nashville along with the inventory list of all evidence recovered from the car.

Neva Thompson testified that the Defendant is the father of her child and, in August 2004, he came from Memphis to Nashville, where she lived. The Defendant brought Anderson to Thompson's house on a weekend and introduced Anderson to Thompson. The Defendant asked about their son, and Thompson indicated he was with Thompson's mother.¹

Vernita King-Harnhamji testified that detectives came by her house later on the same day that the Defendant was taken into custody. The officers took video games and some video game equipment from the house. The detectives told Harnhamji that Seymore had said that the Defendant had brought a gun to her. Harnhamji acknowledged that Seymore had been to her home but explained that the Defendant and Seymore wanted a ride to Nashville to meet with detectives. Harnhamji refused because she had to work the next day, but offered her car, if they would leave her a car. Seymore and the Defendant came over about 7:00 or 8:00 p.m. and took her vehicle. Later that same evening, Harnhamji received a call from the Defendant saying he was not going to Nashville because his mother told him that news agencies were identifying him as the suspect in the homicides. The Defendant said he was on his way back with Harnhamji's car.

Detective B.T. Roberts, who worked with the Shelby County Sheriff's Office in the Detective Division, testified that he was working on August 5, 2004, when officers brought Seymore into the office. Detective Roberts and Detective Williams interviewed Seymore, and asked about the ammunition recovered from his vehicle. Seymore said that he had never seen the ammunition before and was unaware it was in his glove box.

¹ We note that pages are missing from the trial transcript containing portions of testimony from both Thompson and King-Harnhamji. We assume that had the information contained on those pages been relevant to the issues on appeal, one of the parties would have taken appropriate steps to request that the record be supplemented.

Based upon this evidence, the jury convicted the Defendant on all counts and sentenced the Defendant to three life sentences without parole for the three first degree premeditated murder and three felony murder convictions. The trial court merged the felony murder convictions and the first degree premeditated murder convictions. Following a sentencing hearing, the trial court sentenced the Defendant to thirty-five years for the especially aggravated robbery conviction. The trial court then ordered that the Defendant's life sentence without parole for the murder of Goodman run consecutively to all the other convictions, for an effective sentence of two life sentences without parole.

II. Analysis

On appeal, the Defendant argues: (1) there is insufficient evidence to support his conviction for first degree murder “when Appellants Due Process Rights have been violated”; (2) the trial court erred in allowing a witness who previously gave perjured testimony to testify at trial; and (3) the trial court erred when it imposed consecutive sentencing when all of the offenses took place in one continuous act.

A. Sufficiency of the Evidence

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see Tenn. R. App. P. 13(e), *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). A conviction may be based entirely on circumstantial evidence where the facts are “so clearly interwoven and connected that the finger of guilt is pointed unerringly at the Defendant and the Defendant alone.” *State v. Smith*, 868 S.W.2d 561, 569 (Tenn. 1993). The jury decides the weight to be given to circumstantial evidence, and “[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.” *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citations omitted). In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999); *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956). “Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the

trier of fact.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *Liakas*, 286 S.W.2d at 859. “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978); *State v. Grace*, 493 S.W.2d 474, 479 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 405 S.W.2d 768, 771 (Tenn. 1996) (citing *Carroll v. State*, 370 S.W.2d 523 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (citing *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000).

A conviction, however, may not be based solely upon the uncorroborated testimony of an accomplice. *Monts v. State*, 379 S.W.2d 34, 43 (Tenn. 1964); *State v. Green*, 915 S.W.2d 827, 830 (Tenn. Crim. App. 1995). “An accomplice is one who knowingly, voluntarily, and with common intent unites with the principal offender in the commission of a crime.” *State v. Allen*, 976 S.W.2d 661, 666 (Tenn. Crim. App. 1997). The general test is whether the accomplice would be indicted for the offense charged against the defendant. *Id.* The law in Tennessee regarding accomplice testimony has been described as follows:

The rule simply stated, is that there must be some fact testified to, entirely independent of the accomplice’s testimony, which, taken by itself, leads to the inference, not only that a crime has been committed, but also that the defendant is implicated in it; and this independent corroborative testimony must also include some fact establishing the defendant’s identity. This corroborative evidence may be direct or entirely circumstantial, and it need not be adequate, in and of itself, to support a conviction; it is sufficient to meet the requirements of the rule if it fairly and legitimately tends to connect the defendant with the commission of the crime charged. It is not necessary that the corroboration extend to every part of the accomplice’s evidence.

State v. Shaw, 37 S.W.3d 900,903 (Tenn. 2001) (quoting *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994) (citations omitted). Whether sufficient corroboration exists is a determination for the jury. *State v. Bigbee*, 885 S.W.2d 797, 803 (Tenn. 1994)

In this case, a conviction for first degree murder requires proof that the Defendant either committed a premeditated and intentional killing of another; or killed another while either committing or attempting to commit a first degree murder or robbery or aggravated burglary. T.C.A. § 39-13-202 (2006). The elements of especially aggravated robbery include: (1) an intentional or knowing theft of property from a person by violence or putting the person in fear; (2) with the use of a deadly weapon; and (3) where the victim suffers serious bodily injury. T.C.A. § 39-13-403 (2006).

The Defendant argues that the evidence is insufficient to support his convictions for first degree murder and especially aggravated robbery because no evidence corroborated Davis's testimony, as required for accomplice testimony. The State concedes there must be evidence to corroborate the testimony of an accomplice, but maintains that such evidence was presented at trial.

First, we note that Davis was indicted for the murder of Brittany Goodman based on his acknowledgment that Davis knew he was driving to Anderson's apartment with the Defendant to kill her. Thus, we conclude that Davis was an accomplice in the murder of Goodman. The record, however, contains no evidence that Davis knowingly and voluntarily participated in the murders of Anderson and Ramsey; therefore, he is not an accomplice as to those offenses. We will discuss, however, the sufficiency of the evidence with regard to each of the murders in chronological order, based upon when each occurred.

1. The First Degree Murder Convictions for the Deaths of Koehler Ramsey and Marcus Anderson and the Especially Aggravated Robbery Conviction

The evidence, considered in the light most favorable to the State, proves that the Defendant was with Anderson on the days leading up to Anderson's murder. The Defendant was seen both in Memphis and Nashville with Anderson in Goodman's Toyota. The Defendant accompanied Anderson to a meeting with a record manager, Hardy, where the Defendant intervened in the negotiations of Anderson's contract with Hardy, without the support of Anderson. After the meeting with Hardy and on the way to Ramsey's apartment, the Defendant and Anderson argued over the conversation with Hardy. Once at Ramsey's apartment, Anderson still appeared to be frustrated and the Defendant argued with Ramsey

over the price of the marijuana the Defendant wished to purchase. After going to the bathroom, the Defendant returned and shot Ramsey twice in the head at close range and then turned and shot Anderson twice in the head. The Defendant followed Davis out of the apartment, taking video game equipment, the keys to Goodman's Toyota and the marijuana. Once in the car, the Defendant told Davis that they had to get their belongings from Anderson's apartment and kill Goodman because she could link them to the murders.

The Defendant and Davis drove to Waterford Place, where Goodman allowed them to come into the apartment. After collecting their belongings, the Defendant shot Goodman twice in the head at close range. The Defendant and Davis then drove to Memphis in Goodman's Toyota. During the drive, Davis saw a 9mm gun in the Defendant's possession. Bowers also saw the Defendant with a 9mm weapon hours before the murders. The discharged shell casings found by each victim were fired from the same weapon. The Defendant attempted to conceal his role in the homicides, instructing Bady to dispose of a vehicle that he was sending to the body shop. At the time and day indicated by the Defendant, Goodman's Toyota was brought to the body shop. The Defendant also asked Seymore to lie about how the Defendant returned to Memphis from Nashville, and asked Davis not to talk with police. Once the Defendant was taken into custody, he acted as if he had no knowledge of the murders, even though he had discussed the murders and the investigation the previous day with a detective.

Based upon this evidence, we conclude that sufficient evidence was presented for a jury to find the Defendant guilty beyond a reasonable doubt of the first degree murder of Anderson and Ramsey and especially aggravated robbery.

2. The First Degree Murder Conviction for the Death of Brittany Goodman

Because Davis is an accomplice as to Goodman's death, we first look to Davis's testimony and then any corroborating evidence the State presented at trial. Davis testified that he and the Defendant drove to Anderson's apartment in Goodman's Toyota Solara to collect their belongings and kill Goodman because she could link them to the murders of Anderson and Ramsey. Davis recounted that Goodman allowed them into the apartment before going back to a bedroom. Davis gathered his belongings and, as he exited the apartment, heard two gunshots. When the Defendant got out to Goodman's car, he told Davis, "it was easy – easy. All I did was tap her on the shoulder and shot twice." Davis testified that he and the Defendant then drove back to Memphis in Goodman's Toyota Solara and that during the drive, he saw the 9mm gun used in the shootings in the Defendant's possession. The day after

the murders, Davis met with the Defendant, and the Defendant told Davis that he had someone dispose of Goodman's Toyota Solara.

The corroborating testimony at trial was as follows: Dr. Turner testified that Goodman died from two gunshot wounds to the head, fired at close range. Bowers testified that the Defendant possessed a 9mm gun at the golf course on August 3, 2004, shortly before the shootings. Young, the property manager at Anderson's apartment, and Detective Robinson testified that Goodman was found in a bedroom lying in bed under the covers. Officer Kirby testified that there was no sign of forced entry or a struggle in Anderson's apartment. Police testified that Goodman's Toyota Solara was recovered in Memphis, Tennessee at Bady's car shop. Bady testified that the Defendant called him on August 4, 2004 and requested Bady "break the car down" that would be dropped off that evening around 7 p.m. Clark, Bady's employee, testified that a white Toyota Solara was delivered that evening to the shop around 7:00 p.m. Seymore testified that he overheard the Defendant tell someone on his cell phone to take the car to "E's" shop and "get the car cleaned." Seymore testified that he did not drive the Defendant from Nashville to Memphis on August 4, 2004, and stated that the Defendant asked him to lie about this fact. Officer Baker confirmed that the discharged shell casings collected at both crime scenes were discharged from the same weapon, a 9mm gun.

We find that the corroborating testimony provided at trial leads to the inference that a crime was committed and establishes the Defendant's identity. Goodman was found in a bedroom with two gun shots to the head and no forced entry or apparent struggle in the apartment. Her death was ruled a homicide by Dr. Turner which indicates a crime was committed. The Defendant's identity is implicated through the recovery of Goodman's vehicle at Bady's shop in Memphis. The vehicle arrived after the Defendant told Bady that a vehicle would arrive at that time and to dispose of the car. The Defendant is further implicated through the phone conversation Seymore overheard when the Defendant instructed the car be taken to "E's" shop. Additionally, the Defendant was seen with a 9mm gun early in the day before the murders. Finally, the Defendant's request that Seymore lie about how the Defendant returned to Memphis on August 4, 2004, implicates the Defendant in this crime. All of this testimony leads to an inference a crime was committed, establishes the Defendant's identity and corroborates Davis's testimony at trial.

Based upon this evidence, we conclude that sufficient evidence was presented for the jury to find the Defendant guilty beyond a reasonable doubt of the first degree murder of Goodman. As such, the Defendant is not entitled to relief on this issue.

3. Due Process Claim

As part of the Defendant's claim of insufficient evidence, he appears to argue that his due process rights were violated because the box of evidence recovered from Goodman's Toyota Solara was lost when a janitor in Officer Watson's Nashville office thought the box was trash and threw it away.

In *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999), our Supreme Court stated the proper analysis for determining whether a defendant's right to a fair trial has been violated by the negligent destruction of evidence. The first step is to determine whether or not the State had a duty to preserve the evidence. *Id.* at 917. If the State does have a duty to preserve the evidence and failed to do so, the next step of the analysis requires consideration of several factors which include: 1) the degree of negligence by the State; 2) the significance of the missing evidence, in light of the probative value and reliability of substitute evidence available to the defendant; and 3) the sufficiency of other evidence presented at trial supporting the conviction. *Id.*

Upon review of the record, we conclude that the Defendant has failed to demonstrate that his right to a fair trial was affected by the loss and/or destruction of the evidence. *Ferguson*, 2 S.W.3d at 917-18. From the testimony at trial, we believe that the box contained forensic fibers, any latent prints recovered, some blood transfer evidence and photographs taken by the police of the vehicle. The exculpatory value of the box of evidence recovered from Goodman's Toyota Solara is questionable. Assuming that the police had a duty to preserve the box, no evidence was presented that the police acted in a grossly negligent manner. *See id.* Furthermore, as discussed earlier in this opinion, we have concluded that there was sufficient evidence that the Defendant committed these crimes. In fact, we would characterize the evidence of the Defendant's guilt as overwhelming. Accordingly, we believe that this issue is without merit.

B. Prior Perjured Testimony of Davis

The Defendant next argues that the trial court erred in allowing Davis to testify because Davis gave perjured testimony at the preliminary hearing in this case. The State responds that the Defendant has waived this issue on appeal because he fails to cite authority supporting his position. In the alternative, the State argues that the trial court properly allowed Davis to testify at trial.

The Defendant does, in fact, risk waiver of this issue by failing to cite authority in support of his position. Tenn. R. App. P. 27(a)(7); Tenn. R. Ct. Crim. App. 10 (b). We note, however, that the Defendant is not entitled to relief on this issue. No rule of law in Tennessee bars witnesses who have previously given false statements from testifying. Davis admitted multiple times at trial, on the witness stand, and in the presence of the jury, that he testified falsely at the preliminary hearing when he testified that he did not enter Anderson's apartment at the time of Goodman's murder. The defense was given the opportunity to cross-examine Davis on this issue and did so thoroughly. The credibility of witnesses is a jury determination. *State v. Bland*, 958 S.W.2d at 659. It would appear that the jury, even with the knowledge of his prior perjured testimony at the preliminary hearing, credited Davis's testimony at trial. Davis's credibility is an issue for the jury to determine. The Defendant is not entitled to relief on this issue.

C. Sentencing

On appeal, the Defendant contends that the trial court erred when it imposed consecutive sentences. The State counters that the trial court correctly ordered consecutive sentencing based upon the Defendant's extensive criminal history.

When a defendant challenges the length, range or manner of service of a sentence, this Court must conduct a de novo review on the record with a presumption that "the determinations made by the court from which the appeal is taken are correct." T.C.A. § 40-35-401(d) (2006). As the Sentencing Commission Comments to this section note, the burden is now on the appealing party to show that the sentencing is improper. T.C.A. § 40-35-401, Sentencing Comm'n Cmts. (2006). This means that if the trial court followed the statutory sentencing procedure, made findings of facts which are adequately supported in the record, and gave due consideration to the factors and principles relevant to sentencing under the Sentencing Act, the appellate court may not disturb the sentence even if a different result was preferred. Tenn. Code Ann. § 40-35-103 (2006); *State v. Ross*, 49 S.W.3d 833, 847 (Tenn. 2001). The presumption does not apply to the legal conclusions reached by the trial court in sentencing a defendant or to the determinations made by the trial court which are predicated upon uncontroverted facts. *State v. Dean*, 76 S.W.3d 352, 377 (Tenn. Crim. App. 2001); *State v. Butler*, 900 S.W.2d 305, 311 (Tenn. Crim. App. 1994); *State v. Smith*, 891 S.W.2d 922, 929 (Tenn. Crim. App. 1994).

Specific to the review of the trial court's finding enhancement and mitigating factors, "the 2005 amendments deleted as grounds for appeal a claim that the trial court did not weigh properly the enhancement and mitigating factors." *State v. Carter*, 254 S.W.3d 335,

344(Tenn. 2008). The Tennessee Supreme Court continued, “An appellate court is therefore bound by a trial court's decision as to the length of the sentence imposed so long as it is imposed in a manner consistent with the purposes and principles set out in sections -102 and -103 of the Sentencing Act.” *Id.* at 346.

In conducting a de novo review of a sentence, we must consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the mitigating and enhancement factors set out in Tennessee Code Annotated sections 4-35-113 and -114; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and (7) any statement the defendant made in the defendant’s own behalf about sentencing. *See* T.C.A. § 40-35-210 (2006); *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001). We must also consider the potential or lack of potential for rehabilitation or treatment of the defendant in determining the sentence alternative or length of a term to be imposed. T.C.A. § 40-35-103 (2006).

A trial court may impose consecutive sentences if the state proves by a preponderance of the evidence that the offender meets at least one of the criteria listed in the consecutive sentencing statute. T.C.A. § 40-35-115 (2006). In the case under submission, the trial court found that the Defendant met criteria (2), that the Defendant was a “an offender whose record of criminal activity is extensive.” T.C.A. § 40-35-115(b)(2). Consecutive sentencing is guided by sentencing guideline principles providing that the length of the sentence be “justly deserved in relation to the seriousness of the offense” and “no greater than that deserved for the offense committed.” *State v. Imfeld*, 70 S.W.3d 698, 706 (Tenn. 2002); *See* T.C.A. § 40-35-115; T.C.A. § 40-35-102 and -103.

In considering statutory factors for consecutive sentencing, the trial court found:

The Court finds that the Defendant sustained five (5) felony convictions during a ten-year span between the ages of eighteen (18) and twenty-eight (28). The Court finds that, according to the pre-sentence report, the Defendant’s criminal record commenced at age fifteen (15). The Court finds that the Defendant received a three (3) year sentence after pleading guilty to a Felony Drug charge on January 26, 1996, and subsequently on February 6, 1996, received a three (3) year sentence after pleading guilty to a second Felony Drug charge and a one (1) year sentence after pleading guilty to Theft Under \$1,000. The Court

finds that the Defendant received a one (1) year sentence after pleading guilty to Escape on July 22, 1997. The Court finds that on September 4, 2001, the Defendant pled guilty to the lesser charge of Reckless Aggravated Assault after initially being charged with Aggravated Assault. The Court finds that the Defendant received a (2) year sentence for this conviction. The Court finds that the pre-sentence report indicates that the Defendant also was convicted on June 7, 1996, of two misdemeanors, Vandalism and Assault, both alleged to have occurred on October 17, 1995. The Court finds that the Defendant's criminal record is extensive as contemplated by § 40-35-115(2).

Finding that the Defendant had an extensive criminal record and citing the “outright atrociousness of his acts,” the trial court ordered two of the Defendant's first degree murder sentences and the especially aggravated robbery sentence to run concurrently, and the third first degree murder sentence to run consecutively to the other sentences.

We conclude that the evidence does not preponderate against the trial court's finding that the Defendant has an extensive criminal record. Thus, the trial court properly imposed consecutive sentencing based on criteria (2) and the Defendant is not entitled to relief on this issue. T.C.A. 40-35-115(b)(2).

The Defendant also relies on *State v. Gomez*, 239 S.W.3d 733 (Tenn. 2007), in his assertion that the trial court erred in imposing consecutive sentencing. We find this argument misplaced, as our Supreme Court stated in *Gomez*, “Our holding does not, however, affect the trial court's determinations regarding manner of service or the imposition of consecutive sentences.” *Id.* at 743. And more recently, our Supreme Court addressed consecutive sentencing in *State v. Allen*, 259 S.W.3d 671, reasoning:

The decision whether to impose consecutive sentences for multiple crimes is a decision about the manner in which a defendant serves his or her multiple punishments. Whether or not to “stack” sentences for multiple crimes is therefore akin to a trial court's decision as to how and where a defendant serves his sentences: on probation, on community corrections, in split confinement, or in the penitentiary. *Apprendi* and *Blakely* simply do not require the jury to determine the manner in which a defendant serves multiple sentences. That Tennessee's statute require (in most instances) trial courts to make specific factual findings before imposing consecutive sentences does not extend the reach of *Apprendi* and *Blakely*.

Thus, the Defendant is not entitled to relief on this issue.

III. Conclusion

After a thorough review of the record and the applicable law, we conclude that the evidence is sufficient to sustain the Defendant's convictions, the trial court did not improperly admit Davis's testimony based upon his prior perjured testimony, and the trial court properly sentenced the Defendant. As such, we affirm the trial court's judgments.

ROBERT W. WEDEMEYER, JUDGE